

Summary of Examiner Interview – MPEP 713.04

5 The Applicant appreciates the Examiner taking time to interview and discuss the present application. We discussed obtaining a claim directed to a plural of ribs spaced about the distal end of the tubular body of the probe cover to overcome U.S. Patent No. 5,795,076 to Fraden. The Applicant further accepts the Examiner's addition limitation of "non-continuous". The Applicant respectfully suggests the above summary covers the substance of our interview per MPEP 713.04.

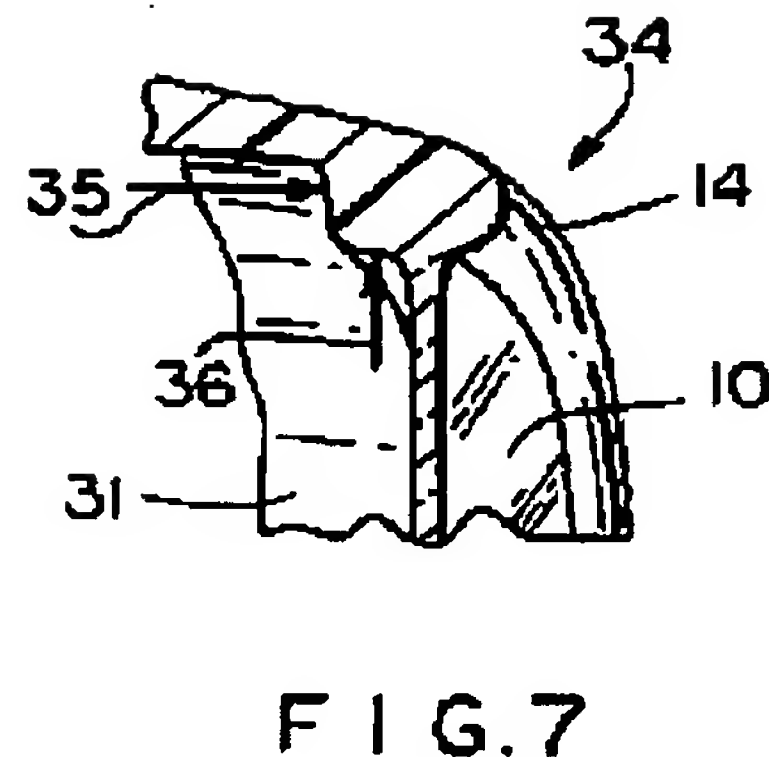
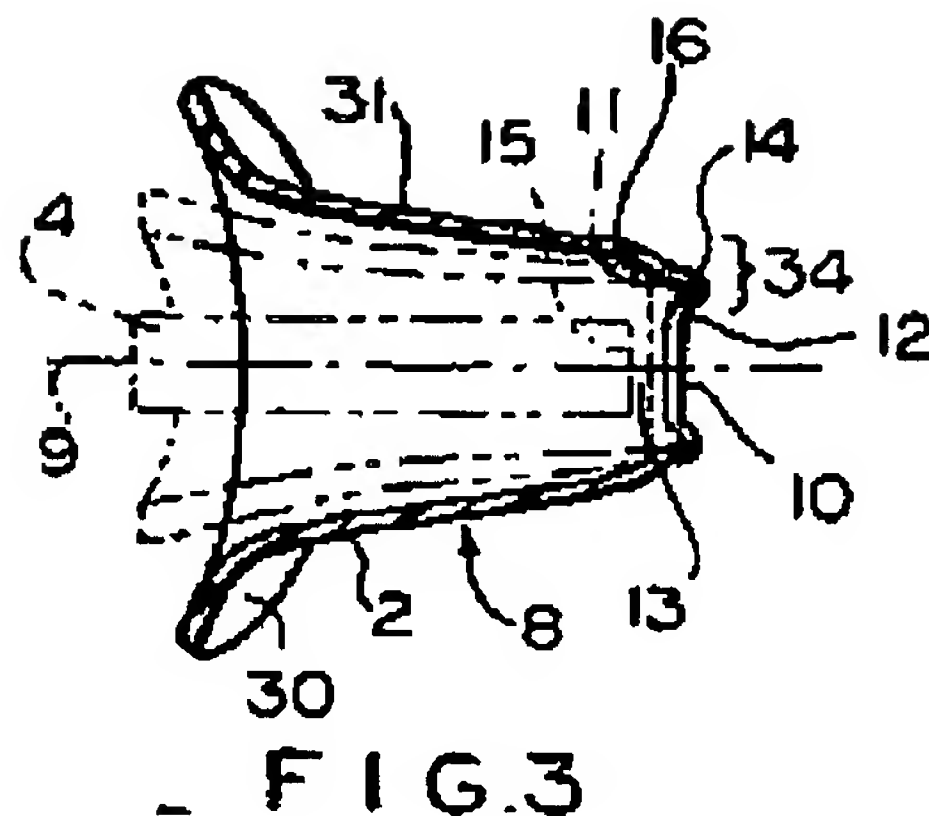
10 Please consider the further remarks in this Reply to the non-Final Office Action mailed September 21, 2006. Claims 1-20 are pending in the application. Claims 1, 18, and 19 are in independent form. Claims 3 and 20 are cancelled. Claim 19 is cancelled without prejudice and will be filed in a divisional, at later date. The Applicant reduced the claim set to that discussed at the 26OCT06 Interview to
15 help facilitate allowance.

Response to Paragraph 2 of the Office Action

In the Office Action, claims 1-6, 17-18 and 20 were found to lack novelty under 35 U.S.C. section 102(b) as being anticipated by U.S. Patent No. 5,795,067 to Fraden et al. (Fraden '067). However, it is respectfully submitted that
20 independent amended claim 1, claims 2, 4-6 and 17 depending therefrom, and independent amended claim 18 meet the requirements for novelty, and patentably distinguish over the Fraden '067 patent, as amended based on the Examiner's Interview and further limitation provided in the Interview Summary.

Referring to FIGS. 3 and 7 reproduced below, the Fraden '067 patent shows
25 a probe cover 8 having a film window 10 (col. 6, lines 1-3). Window 10 forms a recess including a first fold 12 and a second fold 16, or annular flange, that is disposed about the periphery of window 10, adjacent a sidewall 31 (col. 7, lines 4-17).

BEST AVAILABLE COPY



In contrast, independent amended claim 1 recites, *intra alia*, "[a] tubular body extending from a proximal end to a distal end, ... the distal end including a plurality of non-continuous end ribs disposed in circumferentially spaced relation about an inner circumferential surface of the tubular body, the ribs being configured to engage the distal end of the thermometer such that the distal end of the thermometer is spaced apart from the film."

Independent amended claim 18 recites, *inter alia*, "a tubular body portion ... and the distal end being substantially enclosed by a film and including a plurality of non-continuous end ribs being circumferentially spaced apart and disposed about an inner circumferential surface thereof, the end ribs having a longitudinal portion extending proximally along the body portion and a transverse portion projecting along a transverse surface of the film, ... such that the distal end of the tympanic thermometer is spaced apart from the film."

The Fraden '067 patent does not disclose or suggest structure as recited in amended claims 1 and 18. The Fraden '067 patent does not disclose, *inter alia*, a probe cover having a distal end that includes a plurality of non-continuous end ribs being disposed in a circumferentially spaced relation about an inner circumferential surface thereof, wherein the ribs are configured to engage the distal end of a thermometer such that the distal end of the thermometer is spaced apart from the film. Rather, the Fraden '067 patent shows an annular flange that is continuous

around the perimeter of the probe cover wall. Figure 5 of Fraden '067 teaches and discloses radially spaced annular flanges. The Fraden flanges are not in a circumferentially spaced relation about the inner circumference of the tubular body. A flange is not a plural of circumferentially spaced end ribs as claimed.

5 Because of the above distinctions, it is respectfully submitted that independent amended claim 1, claims 2, 4-6 and 17 depending therefrom, and independent amended claim 18 are not anticipated by the Fraden '067 patent.

Response to Paragraph 3 of the Office Action

10 In the Office Action, independent claim 19 was found to be anticipated by U.S. Patent No. 6,238,088 to Wu (Wu '088). The Applicant cancelled independent claim 19 without prejudice. Applicant respectfully will not respond at this time.

Response to Paragraph 5 of the Office Action

15 In the Office Action, claims 7-16 were found to obvious over the Fraden '067 patent in view of the Wu '088 patent. However, it is respectfully submitted that independent amended claim 1 and claims 7-16 ultimately depending therefrom, are not obvious, and clearly and patentably distinguish over the Fraden '067 patent in any combination with the Wu '088 patent.

20 The Fraden '067 patent and the Wu '088 patent have been discussed. The Fraden '067 patent and the Wu '088 patent in no way disclose or suggest structure as recited in claim 1. The Wu '088 patent does not cure the deficiencies of the Fraden '067 patent in that the Fraden '067 patent and the Wu '088 patent do not disclose, *inter alia*, a probe cover having a distal end that includes a plurality of non-continuous end ribs have a space therebetween and disposed about an inner circumferential surface thereof, wherein the ribs are configured to engage the distal
25 end of a thermometer such that the distal end of the thermometer is spaced apart from the film.

 Because of the above distinctions, it is respectfully submitted that independent amended claim 1 and claims 7-16 ultimately depending therefrom are patentable and not obvious over the Fraden '067 patent in any combination with


the Wu '088 patent. Support for circumferentially spacing the plurality of non-continuous end ribs about the inner surface of the tubular body portion, at the distal end of the probe cover is found in Figure 7 of the present invention.

5 In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1, 2, 4-18 presently pending in the application are believed to meet the criteria for novelty and non-obviousness and are believed to be in condition for allowance and patentably distinguish over the art of record. If the Examiner should have any questions concerning this communication, please call the Applicant's undersigned attorney.

10

Respectfully submitted,

15

By: 
Edward S. Jarnolowicz
Registration No. 47, 238
Attorney for the Applicant
15 Hampshire Street
Mansfield, Ma 02048
(508) 261-8476

20